Report of the Medical Transportation Task Force
To the Governor's EMS and Trauma Advisory Committee
August 13, 2004

On February 6, 2004, a four-part charge was delivered to the Medical Transportation Task Force involving licensing problems of emergency medical services not in business to perform scene emergency responses, and problems regarding non-regulated, non-emergency interfacility transport services. Although the Task Force was thoughtfully and purposefully put together to include capable persons from Texas EMS' various stakeholder groups, from the start, it was obvious to all members that the work would not lead to the discovery of some magic bullet that would easily solve these problems.

Absent a magic bullet, Task Force members have individually and cooperatively worked through the charge with remarkable diligence. As per the first charge, multiple statutes and regulations that affect EMS in Texas have been reviewed. Hundreds of ideas have been examined. Taken alone, none of the measures proposed here will solve these problems. Taken collectively, the Task Force, as well as representatives of the Federal Bureau of Investigation, the Office of Inspector General, the Health and Human Services Commission, and the Center for Medicare Services, agree that the Texas Department of Health (TDH) and its successor agency can effectively impact these problems.

The Task Force would be remiss if it did not point out that despite its purposeful diversity, there was no unanimous agreement on many of the issues nor the proposed solutions. However, the proposals herein have been approved by and have the support of the majority of the active Task Force members. Because many of the proposals are bold in their concept and designed to be problematic for entities that attempt to enter Texas EMS without proper training, financing or commitment to the people they propose to serve, GETAC members and TDH can be assured that many of these proposals will be met with strong opposition. To counter such opposition, GETAC and TDH should point out that the proposed solutions are the result of extensive study by a diverse group of experts. And, many Task Force members who support these proposals will themselves be bound by them. They are willing to accept these increased standards because they are convinced that the health and safety of Texans demands new and tougher standards, and because in several areas of the state, unscrupulous and unregulated or under-regulated emergency medical services and non-emergency transfer services are tarnishing the image of all EMS providers.

Task Force members are fully aware that the problems identified in their charge go far beyond the Texas Department of Health's current authority. Because other agencies, such as the State Board of Medical Examiners, State agencies that regulate nursing homes and dialysis centers, municipalities, and various branches of the Federal Government, share the burden of protecting Texans from unscrupulous providers, the Task Force recommends that TDH continue the work that the Task Force has begun in

developing lines of communication and cooperation with other entities. The current centralization and combining of State government agencies could actually benefit such communication and cooperation.

Just as the Task Force has noted that the issues identified in its charge did not suddenly develop, neither can they be quickly solved. Therefore, the Task Force has divided recommendations into short and long-term goals. Generally, the short-term goals can be implemented without legislative change. The long-term goals will require legislative change and will attract significant opposition. Passage of the long-term goals will require that TDH educate stakeholders regarding why such changes are needed and how they will protect the public and ethical providers from unscrupulous competition.

The second charge of this Task Force was to identify pros and cons of the current licensing process for new EMS providers whose scope of business does not include emergency 911 response or emergency interfacility transport. This allows new providers easy entry into Texas EMS and allows providers concerned with good patient care the freedom to do business without being limited by cumbersome government oversight. However, a consequence of this freedom is that unscrupulous providers find entering the system inordinately easy. Increasingly, persons desiring to provide competent, ethical service are finding they cannot compete with unethical providers. To counteract these trends, the Task Force recommends:

<u>Short-term goals</u>

1. Require that all licensed EMS providers operate from adequate business facilities.
    - Require proof of adequate facilities from which to base the business, including business offices, staff facilities and dispatch facilities.
    - Require proof of ownership of the facility. If a leased facility is used, require that a contract identifying all parties involved be submitted.
    - Require a fixed physical location within the service area that can be accessed by the public.
    - Require strict notification of TDH before relocating any facility.
2. Require that each provider submit a signed acknowledgement from the local governing authority that the provider has met all local requirements pertaining to EMS for the area in which the provider conducts and/or proposes to conduct business.
3. Encourage all municipalities to regulate EMS based on the number of vehicles necessary to provide adequate service.
4. Substantially increase insurance requirements above those required by the Motor Vehicle Code to include a minimum of $1 million per occurrence and the addition of non-auto liability.

5. Require EMS providers prominently post on their premises a notice encouraging the report of Medicare and Medicaid fraud or abuse to the Medicare and Medicaid fraud and abuse hotlines, to include hotline phone numbers.
6. To allow for a reasonable assessment of applicants' financial stability, require new providers submit a statement describing their initial source of funding, sources for additional funding, and a first year proposed budget to include projected revenue and expenses.

Long-term goal

1. Before granting a new provider license, require consent of the local governing authority.

The third charge asks for pros and cons related to the current non-regulation of entities that provide only non-emergency interfacility transport services.

The current practices allow the flexibility to provide this service by a variety of agencies at moderate cost. However, in reality, there are two groups of non-emergency providers: those that transport patients who require or may require medical supervision, observation or treatment during transport, and those that provide only transportation to persons who need none of the above and require only reliable transportation. The problems associated with the current situation are that it provides a hodge-podge of services that are sometimes under-regulated and often not clearly understood or appropriately utilized by either the public or third party payors.

For TDH to address the portions of this problem that are within its scope, further refinement of the question implied by the charge is required. The reality is that TDH can not regulate non-medical transport services. The inability to regulate or ban these services does not relieve TDH from the need to regulate non-emergency medical transportation. To facilitate regulation of non-emergency medical transportation, the task force recommends:

Short-term goals

1. Same as previous.

Long-term goals

1. Due to the natural evolution of EMS, the Task Force recognizes that multiple levels of providers offer a variety of services in Texas. It is now imperative to formally identify these levels of service, as follows:
    - Primary emergency provider (Any entity regulated under Chapter 773 and formally associated with a local 911 authority.)
    - Secondary emergency provider (Any entity regulated under Chapter 773 and whose primary role is to provide interfacility transport but which is capable of providing emergency medical services, and does not act as the primary emergency provider but is capable of providing that service as required.)

- Non-emergency provider (Any entity regulated under Chapter 773 and that solely provides non-emergency transportation and is not authorized to provide 911 responses, emergency medical treatment, or interfacility hospital transportation.
- Non-medical transportation provider (Any entity not regulated under Chapter 773 equipped for the transportation of *medically stable, non-emergent,* ***persons*** *who* ***do not*** *require medical supervision, observation or care such as equipment monitoring or medications other than self-regulated oxygen or self administered medications that the person furnishes of their own accord*)

2. Consider defining the following in Chapter 773 and Article 157, and specify requirements associated with each in the current law or rules and in laws or rules adopted as a result of these recommendations:
   - Patient
   - Emergency medical treatment
   - Inter-facility transport
   - Non-emergency transport
   - Primary service provider
   - Secondary service provider
   - Non-medical transportation provider
   - 911 response
3. Unless medical direction is provided by a group of physicians representing clinical specializations such as pediatrics, trauma, surgery, internal medicine, etc., require that EMS medical directors be certified by TDH as Texas EMS medical directors.

As stated at the beginning of this report, there is no magic bullet that will in and of itself solve all of the problems stated within the charge. The fourth charge required the Task Force to propose solutions regarding the issues identified. This has been accomplished above. However, since no single proposal will solve the identified problems, the proposals must be considered in the aggregate. In addition, the Task Force recommends adoption of the following recommendations that will enhance the regulatory stance of the Texas Department of Health and aid it in further protecting the citizens of Texas.

<u>Long term goals</u>

1. Increase all fees to reflect the actual cost of issuing licenses and providing for enforcement.
2. Provide for monetary penalties for EMS personnel who violate Chapter 773 and Article 157 (not exceeding $150 per occurrence)
3. Establish EMS as an essential service, as are fire and police.